TRANSMITTAL OF APPEAL BRIEF (Large Entity)	Docket No. ITL.0472US

In Re Application Of:

OLEG B. RASHKOVSKIY

Serial No. 09/690,159	Filing Date OCTOBER 17, 2000	Examiner NGOC K. VU	Group Art Unit 2611

Invention:

PROVIDING CONTENT INTERRUPTIONS

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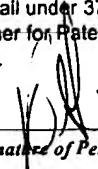
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Oleg B. Rashkovskiy	§	Group Art Unit:	2611
		§		
Serial No.:	09/690,159	§		
		§	Examiner:	Ngoc K. Vu
Filed:	October 17, 2000	§		
		§		
For:	Providing Content	§	Atty. Dkt. No.:	ITL.0472US
	Interruptions	§		(P10019)
		§		
Customer No.:	21906	§	Confirmation No.:	2744

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APPEAL BRIEF

Sir:

Applicants respectfully appeal from the final rejection mailed December 16, 2003.

I. REAL PARTY IN INTEREST

The real party in interest is the assignee Intel Corporation.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF THE CLAIMS

Claims 1-6, 11-16 and 26-27 have been canceled. Claims 7-10, 17-25 and 28-43 have

been finally rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

All amendments are entered.

V. SUMMARY OF THE INVENTION

A digital broadband distribution network 10, shown in Figure 1, may implement the distribution of a variety of content formats and the provision of content interruptions on a content receiver 16. The content receiver 16 receives content from a content transmitter 12 that in turn receives broadcast content from a content provider 14. Specification, at page 4, line 9 through line 14.

The content transmitted by the transmitter 12 may be made up of conventional content termed "interruptible content" and "interrupting content". Interruptible content is content whose operation, play, or use may be interrupted for the substitution of other content. The content that is temporarily substituted for the interruptible content is called the interrupting content. Specification, at page 4, line 15 through line 21.

In accordance with one embodiment, interruptible content that the user desires to receive may be interrupted with interrupting content that may help to pay for the interruptible content. The interrupting content may include advertisements. Specification, at page 4, line 22 through line 26.

The interruptible content may be video, graphics, audio, games, and other software such as application software. The interrupting content may be substituted for the interruptible content under control of the receiver 16 in one embodiment. Specification, at page 5, line 1 through line 5.

The content from the content transmitter 12 is received by a tuner/demodulator 18 contained in the digital content receiver 16. The tuner/demodulator 18 tunes to one or more channels and demodulates those channels for display. In addition, the tuner/demodulator 18 may parse the interruptible and interrupting content and forward that information to an encrypted cache 20. The tuner/demodulator 18 also parses storing instructions utilized for controlling the storage of the content. The storing instructions are also forwarded to the encrypted cache 20 for use in storing the content. In addition, the tuner/demodulator 18 may parse upgrades, provided with the content, for upgrading previously received content. Finally the tuner/demodulator 18 may parse interruption instructions from the rest of the content. These interruption instructions

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tell when to interrupt the interruptible content with the interrupting content. The interruption instructions may be forwarded to a program guide 24. Specification, at page 5, line 6 through line 24.

The program guide 24 may receive interruption instructions from a back channel that may be coupled to the broadcast content provider 14. The interruption instructions may be conveyed, for example, over the Internet as indicated at 26. In some cases, the interruption instructions may be updated, revised or extended and therefore it may be necessary to convey them after the original content is received. Specification, at page 5, line 25 through page 6, line 6.

The program guide 24 may provide a schedule of available information that may be received from the content provider 14. This information may be accessed over the backchannel such as the Internet 26 to reduce the storage requirements on the content receiver 16. The interruption instructions, received over the back channel or as parsed by the tuner/demodulator 18, may be forwarded by the content guide 24 to a shell 22. The shell 22 in one embodiment of the present invention may be a software module that controls the use of content received from the broadcast content provider 14. Moreover, the shell 22 implements the interruption of interruptible content with interrupting content in accordance with interruption instructions received as described previously. Specification, at page 6, line 7 through line 20.

The encrypted cache 20 stores the content in a format that prevents decryption and theft by unauthorized individuals. The encrypted cache 20 may, for example, be part of a hard disk drive. When content is received by the system 10, the shell 22 stores the information on the hard disk drive and particularly in the encrypted cache. For example, the shell 22 may cause the content to be distributed to a variety of storage locations on the hard disk drive so that the content may not be continuously accessed in one contiguous hard drive area. Only the shell 22 can access the map that indicates where the content is stored on the hard disk drive and how it can be reconstructed to play back the content in a meaningful fashion. Specification, at page 6, line 21 through page 7, line 8.

Thus, as content is acquired from a source and stored through the shell into the hard disk drive, it is stored in a form that can only be access by the shell thereafter. To access the content one must access the content through the shell because only the shell knows where all the portions of the content are stored and how to reconstruct it in a meaningful fashion. Thus, the shell can

control access in a variety of ways. For example, the shell can prevent access, the shell can provide access only in return for either watching a commercial or paying a fee or the shell may limit the number of times that the content may be viewed or even the times when the content may be viewed. Specification, at page 7, line 9 through line 20.

Thus, in the embodiment illustrated in Figure 1, the shell 22 may have content, such as games or rentable software as a few examples. When the user wishes to use the content that is available from the content provider 14, the user may request a download of that information or that information may be conveyed during conditions of high bandwidth availability. Alternatively, other schemes for providing the content to the receiver 16 may be utilized. In general, the transport mechanism may include any digital mechanism such as satellite transmission, cable transmission or airwave broadcast. Specification, at page 7, line 21 through page 8, line 5.

Conceivably, the content may also be provided in conventional physical, portable forms such as compact disks (CD-ROM), digital video disks (DVD), flash memory or the like. The content, however received, is encoded in a way in which, absent the use of the shell 22, one would be unable to use, hear, view, play or otherwise enjoy the content. Thus, the system controls access to the content in a secure way using encryption provided with the content as conveyed over the transport media or as received in physical form by the user. Specification, at page 8, line 6 through line 15.

Once the information has been cached in the cache 20, the user can receive the right to enjoy play, hear or view the content as the case may be from the shell 22. The shell 22 then releases the information for use in the appropriate format on the processor-based content receiver 16. The shell 22 may also control the number of times or the time period when the content may be used. Specification, at page 8, line 16 through line 22.

Moreover, the shell 22 monitors a criteria which determines when the content's use is to be interrupted with interrupting content. Thus, the shell 22 may force a mechanism wherein interrupting content may be temporarily played in place of interruptible content. For example, advertisements may be provided together with the interruptible content. Alternatively, the interrupting and interruptible content may be received at different times via different mechanisms. Specification, at page 8, line 23 through page 9, line 5.

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For example, the interrupting content may be inserted at regular intervals. After allowing content to be played for a predetermined amount of time, interrupting content may be inserted automatically. In other cases, the interrupting content may be inserted when advantageous conditions arise. For example, in connection with gaming software, when the user reaches a stopping point, the system may determine that the action has paused sufficiently that the interrupting content may be inserted. Moreover, instead of linearly inserting the interrupting content, the content may be inserted in a progressive fashion. Thus, the more the user uses the content the higher the rate at which interrupting content may be substituted. Specification, at page 9, line 6 through line 19.

In one embodiment of the present invention, the content that is being played may be interrupted with the play of the commercial in real time. That is, when the commercial is broadcast over a broadcast media, it may automatically be inserted into the playback of the content on the system 10 as well. Specification, at page 9, line 20 through line 25.

In one embodiment of the present invention, the interruptible content may be an advertisement; however, the interrupting content may also be a request that the user make some form of payment in order to continue to use the interruptible content. For example, the receiver 16 may be called upon to access backchannel to make a payment for the continued use of the content. When the receiver 16 does so, the receiver 16 may be provided with a code either through the back channel or from the content provider which allows continued use of the interruptible content. Specification, at page 10, line 1 through line 10.

In some embodiments of the present invention, techniques may be utilized to reduce the likelihood that users of the system 10 will discontinue their use when the commercial is played. For example, an overlay may be provided over the commercial indicate what is coming up next in the content. For example, where the content is game and the commercial is inserted after the user reaches a given level, information may be provided about the next level as an overlay, for example, over the ongoing play of the commercial. Specification, at page 10, line 11 through line 20.

Referring to Figure 2, the software 28 for controlling the interruption of the interruptible content may be stored on a suitable storage medium such as a hard disk drive on the receiver 16. Initially, the software 28 waits for a request for content as indicated in diamond 30. Once such a request is received, the content may be supplied as indicated in block 32. In the same process,

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interruption instructions may be acquired as indicated in block 34 for the content that was requested and supplied in block 32. In addition, interrupting content may then be obtained as indicated in block 36. When an interruption criteria is satisfied, as determined in diamond 38, the ongoing use of the interruptible content may be interrupted as indicated in block 40. Thus, in one embodiment of the present invention, the interruptible content is interrupted upon satisfaction of an interruption criteria. The interrupting content, such as an advertisement, is substituted temporarily. Specification, at page 10, line 21 through page 11, line 12.

A check at diamond 42 then determines whether the interrupted criteria is complete. If not, the flow recycles to continue to check to determine whether the interruption criteria is satisfied at diamond 38. Otherwise, the flow ends. Specification, at page 11 line 13 through line 17.

A processor-based content receiver 16 in accordance with one embodiment of the present invention shown in Figure 3, may be a set top box, a desk top computer, an appliance, a handheld device, or other form factors. The receiver 16 may include a processor 44. In one embodiment, the processor 44 may be coupled to an accelerated graphics port (AGP) chipset 46 for implementing an accelerated graphics port embodiment. The chipset 46 communicates with the system memory 52, the AGP port 48 and the graphics accelerator 50. A television 54 may be coupled to the video output of the graphics accelerator 50. The chipset 46 is also coupled to a bus 56 that may be, for example, a Peripheral Component Interconnect bus (PCI) bus. The bus 56 connects to a TV tuner/capture card 58 that provides tuning and demodulation for receiving the digital signal. The card 58 may be coupled an antenna 60 or other source of digital video such as a cable input, a satellite receiver or the like. Specification, at page 11, line 18 through page 12, line 11.

The bus 56 is also coupled to a bridge 62 that couples the hard disk drive 64 that may store the software 28 and 80 in one embodiment of the present invention. The bridge 62 is also coupled to another bus 66 that may be coupled to a serial input/output (SIO) device 68. In one embodiment of the present invention, the device 68 is in turn coupled to an interface 70 that may be an infrared interface. The interface 70 communicates with a remote control unit 72. Also connected to the bus 66 is a basic input/output system (BIOS) 74. Specification, at page 12, line 12 through line 21.

In some cases, a large amount of content may eventually be downloaded or otherwise acquired and stored in a storage medium associated with the system 10. For example, in conventional systems, the storage medium may be a hard disk drive. Thus, it may be useful for the user to know what content has been stored on the user's hard disk drive. A file may be assembled which gives the user a content guide that lists all the content that is still available for access through the shell 22. In this way, the user can select that content by selecting one of the entries in the content guide. For example, the entries in the content guide may be selected by mouse clicking on them causing the content to immediately begin play. Specification, at page 12, line 22 through page 13, line 8.

While a digital receiving system has been described above, the present application is equally applicable to analog systems such as analog television receivers that work with set-top boxes. In such case, storing instructions may be provided over the vertical blanking interval in one embodiment of the present invention. Alternatively, storing instructions may be received over the Internet or through some other source. Specification, at page 13, line 9 through line 16.

In another alternate embodiment, interruption instructions, interrupting content and interruptible content may be received over the Internet 26. In such case, the content may be forwarded through the program guide 24 and directly to the encrypted cache 20. As a result, the content bypasses the tuner/demodulator 18 but still ends up being stored in the encrypted cache 20 as described previously. That information may then be accessed through the shell 22 in the same way as information stored in the encrypted cache 20 via the tuner/demodulator 18. The interruption instructions may be sent through the program guide 24 to the shell 22. Specification, at page 13, line 17 through page 14, line 2.

The software 80, shown in Figure 4, enables the insertion of advertisements in an interruptible content delivery system to implement advertiser insertion guidelines. Advertisers may wish to avoid having their advertisements associated with particular types of content considered unsuitable. For example, some content may have sex, language, violence or other aspects which the advertiser may wish to avoid becoming associated with. In addition, an advertiser may prefer that its advertisements be played in association with particular types of content. For example, an advertiser may believe that people who enjoy particular types of content may be more or less likely to purchase particular types of products and services. Thus, advertisers may wish to control the content with which their advertisements are associated.

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Advertisers may wish their advertisements to run in conjunction with specific types of content. Embodiments of the software 80 enable these types of guidelines to be automatically implemented. Specification, at page 14, line 3 through line 21.

The software 80 begins by determining whether a scheduled advertising time has arrived as determined in diamond 82 in accordance with one embodiment of the present invention. In some cases, particular advertisements may be inserted at particular times. In other cases, the advertisements may be inserted using other determining characteristics. Specification, at page 14, line 22 through page 15, line 2.

In an embodiment in which scheduled time is the event that triggers the play of a particular advertisement, a required rating for a particular advertisement is accessed, as indicated in block 84. Each advertisement may be identified with a particular rating that indicates the nature of content with which the advertisement may be associated. Thus, content may be rated, for example on a numerical system, based on characteristics that may be considered suitable or unsuitable to various advertisers. For example, the presence of violence, sex, race issues, or language aspects may be used to assign a particular rating to content making that content more or less desirable to particular advertisers. For example, some advertisers may wish to be associated with content that includes obscene language while other advertisers may prefer not to be associated with such content. Specification, at page 15, line 3 through line 18.

In one embodiment of the present invention, the content may receive an overall suitability rating which may be accessible in a database, for example. In other embodiments of the present invention, the content may receive suitability ratings with respect to a number of aspects such as language, sexual content, violence, and the like. Specification, at page 15, line 19 through line 24.

The suitability rating of a particular item of content currently being played by the user may be compared to a rating required by a particular advertiser as indicated in block 86. If there is a match, as determined at diamond 88, the nature of the content is compared to any specific requirements for types of content desired by the advertiser as indicated in block 90. For example, in a system in which audio files are made available to users, one advertiser may prefer to advertise in connection with rock and roll content while another advertiser may prefer to advertise in connection with jazz content. A check at block 90 determines what types of content, if any, have been specified by the advertiser. For example, keywords in content descriptions

may be searched to see if there is a content type match with the advertiser's content type guideline. If there is a content type match, as determined in diamond 92, the advertisement is run as indicated in block 94. If there is not a content type match at diamond 88 or at diamond 92, the flow iterates back to the beginning. Specification, at page 15, line 25 through page 16, line 18.

An automated system may then implement advertiser guidelines with respect to suitability and content type, as two examples. In one embodiment, each content file may include an identifying field that provides information about suitability and content type. Similarly, the advertisements may be associated with suitability and content type requirements. The software 80 matches the suitability and content type requirements with the actual content being played at any particular time and determines whether a particular advertisement is suitable for insertion in connection with the on-going content being played. Specification, at page 16, line 19 through page 17, line 4.

VI. ISSUES

A. **Has A *Prima Facie* Case of Obviousness Been Established with Respect to Claim 7?**

B. **Has A *Prima Facie* Case of Obviousness Been Established with Respect to Claim 34?**

C. **Does Levitan Teach Determining a Type of Content As Called For in Clam 24?**

D. **Does Levitan or McGarrahan, Alone or on Combination Teach Comparing a Content Type to a Type of Content Required by an Advertiser As Called For in Claim 36?**

VII. GROUPING OF THE CLAIMS

For purposes of this appeal claims 7-10, 17-23, 25, 28-33, 42 and 43 form a first group; claims 34-35 and 38-41 form a second group; claim 24 comprises a third group; and claims 36-37 form a fourth group. Thus, the claims do not stand or fall together. The patentability of each of the aforementioned groups is discussed below. The patentability of each of the aforementioned groups is discussed below.

VIII. ARGUMENT

All claims should be allowed over the cited references for the reasons set forth below.

A.   Has A *Prima Facie* Case of Obviousness Been Established with Respect to Claim 7?

Claim 7 was finally rejected under 35 U.S.C § 103(a) as being unpatentable over Levitan in view of McGarrahan.

Claim 7 calls for accessing a predetermined rating assigned to one or more characteristics of content, the rating based on the degree to which the one or more characteristics is present within content, and comparing the rating for the content to a content rating specified by an advertiser, the content rating specified by the advertiser to indicate a level of the one or more characteristics present in content that is acceptable to the advertiser.

> *1.   Does McGarrahan Teach Comparing a Rating for Content to a Content Rating Specified by an Advertiser, the Content Rating Specified by the Advertiser to Indicate a Level of the One or More Characteristics Present in Content That is Acceptable to the Advertiser?*

In the final Office Action, the Examiner concedes that Levitan fails to disclose comparing a rating for content to a content rating specified by an advertiser, the content rating specified by the advertiser to indicate a level of one or more characteristics present in content that is acceptable to the advertiser. Thus, one issue on appeal is whether McGarrahan teaches this limitation. If neither Levitan nor McGarrahan identify the above stated limitation, claim 7 is patentable. M.P.E.P. § 2143, *Basic Requirements of a Prima Facie Case of Obviousness* ("the prior art reference (or references when combined) must teach or suggest all the claim limitations").

McGarrahan, fails to specifically disclose a content rating specified by an advertiser that indicates a level of one or more characteristics present in content that is acceptable to the advertiser. Generally, pursuant to McGarrahan, the viewing habits of a person are monitored. Page 5, paragraph 48. For example, a value for each item of content is assigned. *Id.* The assigned value indicates the receptiveness of a customer to certain products. *Id.* An advertisement is selected that would be effective on or pertinent to <u>that</u> customer. *Id.* Thus, McGarrahan selects advertisements based on the preference of the viewer. In contrast, according

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to some embodiments of the present invention, the focus is on the advertiser's preference. In this way, advertisers may avoid having their advertisements associated with content that is considered unsuitable. Clearly McGarrahan is concerned with viewer preference.

McGarrahan's parental control also fails to teach advertiser preference. For example, McGarrahan may pre-classify content according to categories of language, nudity, violence, etc. and tag the content with a parental guidance rating. Page 6, paragraph 59. Due to McGarrahan's parental controls, an R rated advertisement may be presented in conjunction with an R rated movie. Page 5, paragraph 48. In this way, children are prevented from viewing inappropriate content that may have an advertisement and/or a trailer placed before or after the content. *Id.*

It is respectfully submitted that McGarrahan does not <u>have to</u> compare a movie rating to a content rating specified by an advertiser as asserted in the final Office Action. That is, McGarrahan's <u>parental control</u> enables the presentation of R rated content in conjunction with R rated advertisements. Page 5, paragraph 48. Thus, access to content is granted or restricted on that basis. Page 6, paragraph 59. In other words, access may be granted based on a comparison to parameters set by a parent. Thus, the movie rating and advertisement rating do not have to be compared.

Further, merely having a rating in common does not indicate that the given characteristic that resulted in the rating is considered suitable to a given advertiser. For example, an advertisement may have an R rating due to language. However the advertiser may object to violence or nudity. Pursuant to McGarrahan, there is nothing to prevent an advertisement from being presented with content having the objectionable characteristic if it is determined that the viewer would be receptive to the advertisement.

In view of the above, it is submitted that neither Levitan nor McGarrahan discloses a content rating specified by an advertiser that indicates a level of one or more characteristics present in content that is acceptable to the advertiser and comparing the rating for the content to the content rating specified by the advertiser. Because the references do not teach or suggest all claim limitations, a *prima facie* case of obviousness has not been established.

2. Is There a Suggestion or Motivation to Modify Levitan In View Of McGarrahan?

There is no suggestion or motivation to modify Levitan in view of McGarrahan. In addition to identifying the claim limitations in the prior art, "there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). Further, it is improper to combine references where they teach away from their combination. M.P.E.P. § 2145 (X)(D)(2) *References Cannot Be Combined Where Reference Teaches Away From Their Combination, citing In re Grasselli*, 713 F. 2d 731, 743 (Fed. Cir. 1983).

Levitan describes a system that maintains the privacy of the viewer. Page 1, paragraphs 4 and 8; page 3, paragraph 25. Specifically, Levitan states that it is an object of the invention to provide a system for personal editing of television programs based on viewer information that is privately stored in the viewer's computerized television receiver. Page 1, paragraph 8. In contrast, McGarrahan monitors the viewing habits of the customer via software on a set-top box. Page 5, paragraph 48. This information is reported back (anonymously) to a central billing server as feedback to advertisers. *Id.* Levitan specifically states that the viewer's profile data is privately stored so that advertisers can use the viewer's information without having access to the information. Page 3, paragraph 25. This aspect of Levitan would be altered by McGarrahan. That is, according to McGarrahan, the advertiser has access to viewer information, which Levitan specifically teaches away from. Thus, it is respectfully submitted that the modification of Levitan in view of McGarrahan would not be obvious. As such, for this additional reason, a *prima facie* case of obviousness has not been established with respect to claim 7.

B.   Has A *Prima Facie* Case of Obviousness Been Established with Respect to Claim 34?

Claim 34 calls for assigning a rating to content, the rating based on the degree to which a characteristic is present in the content, and comparing the assigned rating of content to a content rating required by an advertiser, the content rating required by the advertiser to indicate an acceptable level of the content characteristic with which an advertisement of the advertiser may be associated.

1. Does Levitan or McGarrahan Disclose Comparing an Assigned Rating of Content to a Content Rating Required by an Advertiser, the Content Rating Required by the Advertiser to Indicate an Acceptable Level of The Content Characteristic With Which an Advertisement of The Advertiser May be Associated?

In the Office Action, the Examiner concedes that Levitan does not specifically disclose the above limitation. It is submitted that McGarrahan fails to cure the deficiency of Levitan. As was explained above, the presentation of an R rated advertisement in conjunction with an R rated movie in McGarrahan is based on parental control and/or viewer preference.

In contrast, pursuant to claim 34, an advertiser <u>requires</u> a particular content rating, the content rating to indicate an acceptable level of a content characteristic. There is simply no teaching in McGarrahan of an advertiser requiring content to have a particular rating. For example, in McGarrahan, an advertisement may be R rated. Furthermore, a movie may also be R rated. The presentation of the movie and advertisement is dictated by the desire for parental control over what a child can watch. Therefore, McGarrahan does not teach a comparison of a content rating to a content rating <u>required</u> by an advertiser.

Moreover, merely having the same rating does not indicate that this is a content rating <u>required</u> by an advertiser. That is, the advertiser may be opposed to the particular characteristic that resulted in the R rating of the movie. Thus, the advertiser would not want its advertisement presented in conjunction with that R rated movie. In contrast, McGarrahan would allow the advertisement to be presented with the content (over the advertiser's objection) based on the viewer's habits. As such, neither Levitan nor McGarrahan teach or suggest every claim limitation of claim 34.

2. Is There a Suggestion or Motivation to Modify Levitan in View of Mcgarrahan?

As was explained above in section A2, there is no suggestion or motivation to modify Levitan in view of McGarrahan because Levitan teaches away from McGarrahan. Further, their must be a showing of a suggestion or motivation to modify. *In re Kotzab*, 217 F. 3d 1365, 1370 (Fed. Cir. 2000). Toward this end, particular findings must be provided. *Id.* In fact, in recent Board of Appeals decisions, the examiner is called upon to specifically recite language in the references to support the rationale to combine. *See e.g., Ex parte Jones*, 62 U.S.P.Q. 2d 1206, 1208 (Board of Patent Appeals and Interferences 2001) ("Moreover, when an examiner

maintains that there is an explicit or implicit teaching or suggestion in the prior art, the examiner should indicate where (page and line or figure) such a teaching or suggestion appears in the prior art").

In the Office Action, a conclusion of obviousness is given without showing where references suggest the desirability of the modification. Accordingly, for this additional reason a *prima facie* case of obviousness has not been established with respect to claim 34.

C. Does Levitan Teach Determining a Type of Content As Called For in Clam 24?

Claim 24 calls for determining the type of content. In the Office Action, paragraphs 7, 10 and 23 of Levitan are relied upon as teaching the limitations of claim 24. It is respectfully submitted that these paragraphs do not teach determining a type of content.

For example, Levitan is directed toward television programs. *See,* page 1, paragraph 4. A scene of a program may include "controversial matter." Page 1, paragraphs 7 and 10. The controversial matter is not a type of content. For example, in other places in the Office Action, namely, the rejection of claim 21, the "controversial matter" is indicated as being a characteristic of the content. *See also,* the rejection of claim 7. It is respectfully submitted that a <u>characteristic</u> of content differs from a <u>type</u> of content. Thus, replacement of a scene with "controversial matter" is not the same as determining a type of content. For this reason, a *prima facie* case of obviousness has not been established.

D. Does Levitan or McGarrahan, Alone or on Combination Teach Comparing a Content Type to a Type of Content Required by an Advertiser As Called For in Claim 36?

Claim 36 calls for comparing content type to a type of content required by the advertiser. Claim 37 depends from claim 36 and calls for comparing musical content to a type of content required by the advertiser. Neither Levitan nor McGarrahan alone or in combination teach comparing a content type to a type of content required by the advertiser. For example, neither reference discloses comparing content type such as movies, music, sports, children's programs, etc. with a type of content required by an advertiser. Likewise, neither reference specifically discloses comparing musical content such as rock, jazz, classical, etc. to a type of content

required by the advertiser. Television programming including musical content has nothing to do with the advertiser <u>requiring a specific type</u> of content such as musical content or a specific type of musical content absent television programming. As such, it is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claims 36 and 37.

IX. CONCLUSION

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: _____ May 18, 2004· _____

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APPENDIX OF CLAIMS

7.   A method comprising:

allowing the use of a content on a content receiver;

automatically interrupting the use of content;

enabling the receiver to temporarily replace the content with advertising;

accessing a predetermined rating assigned to one or more characteristics of said content, said rating based on the degree to which said one or more characteristics is present within content; and

comparing said rating for the content to a content rating specified by an advertiser, said content rating specified by said advertiser to indicate a level of said one or more characteristics present in content that is acceptable to said advertiser.

8.   The method of claim 7 including enabling a variety of content to be selected for play at any time.

9.   The method of claim 7 including automatically replacing the content with advertising after allowing content to be used for a predetermined amount of time.

10.   The method of claim 7 including automatically determining at predetermined times whether to replace the content.

17.   An article comprising a medium for storing instructions that enable a processor-based system to:

allow the use of content on the system;

automatically interrupt the use of content;

enable the system to temporarily replace the content with advertising;

access a predetermined rating assigned to one or more characteristics of said content, said rating based on the degree to which said one or more characteristics is present within content; and

compare said rating for the content to a content rating specified by an advertiser, said content rating specified by said advertiser to indicate a level of said one or more characteristics present within content that is acceptable to said advertiser.

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18.   The article of claim 17 further storing instructions that enable a processor-based system to enable a variety of content to be selected for play at any time.

19.   The article of claim 17 further storing instructions that enable a processor-based system to automatically replace content with advertising after allowing content to be used for a predetermined amount of time.

20.   The article of claim 17 further storing instructions that enable the processor-based system to automatically determine at predetermined times whether to replace said content.

21.   A system comprising:

a receiver that receives the transmission of content, said receiver including a shell to enable the use of content to be interrupted and temporarily replaced with advertising; and

storage coupled to said receiver storing instructions that enable said receiver to access a predetermined rating assigned to one or more characteristics of said content, said rating based on the degree to which said one or more characteristics is present within content, and compare said rating for the content to a content rating specified by an advertiser, said content rating specified by said advertiser to indicate a level of said one or more characteristics present in content that is acceptable to said advertiser.

22.   The system of claim 21 wherein said system is a television receiver.

23.   The system of claim 21 wherein said storage stores instructions that enable the receiver to access an indicia that indicates a characteristic of the content.

24.   The storage of claim 23 wherein said storage stores instructions that enable the receiver to determine the type of content.

25.   The system of claim 23 wherein said storage stores instructions that enable the receiver to determine the suitability of the content.

28.   The storage of claim 21 wherein said receiver automatically to replace the content with advertising after allowing content to be used for a predetermined amount of time.

29. The system of claim 21 wherein said receiver automatically determines at predetermined times whether to replace the content with advertising.

30. The system of claim 21 wherein the receiver enables a variety of content to be selected for play at any time.

31. The method of claim 7 wherein accessing a predetermined rating includes accessing a predetermined rating assigned to one or more characteristics from the group consisting of sexual content, violence and offensive language.

32. The article of claim 17 further storing instructions that enable a processor-based system to access a predetermined rating assigned to one or more characteristics from the group consisting of sexual content, violence and offensive language.

33. The system of claim 21 wherein said storage stores instructions that enable the receiver to access a predetermined rating assigned to one or more characteristics from the group consisting of sexual content, violence and offensive language.

34. A method comprising:

assigning a rating to content, said rating based on the degree to which a characteristic is present in said content; and

comparing said assigned rating of content to a content rating required by an advertiser, said content rating required by said advertiser to indicate an acceptable level of the content characteristic with which an advertisement of said advertiser may be associated.

35. The method of claim 34 further including determining whether the assigned rating of said content and said content rating required by said advertiser match.

36. The method of claim 35 further including comparing content type to a type of content required by the advertiser.

37. The method of claim 36 wherein comparing content type includes comparing musical content to a type of content required by the advertiser.

38. The method of claim 34 wherein assigning a rating to content includes assigning the rating based on the degree to which a potentially undesirable characteristic is present in said content.

39. The method of claim 38 wherein assigning the rating based on the degree to which a potentially undesirable characteristic is present in said content includes assigning the rating based on the degree to which a potentially undesirable characteristic from the group consisting of sexual content, violence and offensive language is present in the content.

40. The method of claim 35 further including receiving content on a content receiver and automatically interrupting the use of content to replace said content with said advertiser's advertisement when said assigned rating of said content and said content rating required by said advertiser match.

41. The method of claim 40 wherein automatically interrupting the use of content includes replacing said content with said advertiser's advertisement after allowing the content to be used for a predetermined amount of time.

42. The method of claim 7 including said content receiver to temporarily replace the content with advertising when said rating for the content is at an acceptable level as indicated by said content rating specified by said advertiser.

43. The article of claim 17 further storing instructions that enable a processor-based system to temporarily replace the content with advertising when said rating for the content is at an acceptable level as indicated by said content rating specified by said advertiser.